STATE OF MICHIGAN

COURT OF APPEALS

STANLEY TURNER, MARILYN TURNER, and ANTON WONG,

Plaintiffs/Counter-Defendants-Appellees,

v

WILLIAM H. ZIMMERMAN and SANDY ZIMMERMAN,

Defendants/Counter-Plaintiffs,

and

WESTVIEW SHORES ASSOCIATION, INC.,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
July 16, 2009

No. 283482
Isabella Circuit Court
LC No. 03-002576-CH

Before: Before: Meter, P.J., and Murray and Beckering, JJ.

PER CURIAM.

This case involves the continued litigation over the property rights in Waters Edge Park, a private park that abuts Littlefield Lake within a dedicated plat of land identified as Garchow's Third Addition to Westview Shores. In a prior appeal, this Court held that plaintiffs have an irrevocable, nonexclusive easement in the park, but remanded for further factual development regarding the retention of riparian rights by the original proprietors, Bernard and Catherine Garchow, and the extent and nature of plaintiffs' riparian rights. *Turner v Zimmerman*, unpublished opinion per curiam of the Court of Appeals, issued May 1, 2007 (Docket Nos. 265008, 265013) ("*Turner I*"). Following a bench trial on remand, the circuit court determined that after dedication of the park and sale of all subdivision lots, the Garchows retained the fee interest in the park property, which was transferred to plaintiffs in 2004 pursuant to a valid quitclaim deed, thereby providing plaintiffs with full riparian rights to the lake. Defendant Westview Shores Association, Inc., appeals as of right. We affirm.

I. Standards of Review

The determination of a party's rights under a plat dedication is a question of fact. *Dyball v Lennox,* 260 Mich App 698, 703; 680 NW2d 522 (2003). "An action to quiet title is an equitable action, and the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo." *Fowler v Doan*, 261 Mich App 595, 598; 683 NW2d 682 (2004). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

II. Analysis

We disagree with defendant's argument that the Garchows lost all ownership rights to the park once it was dedicated and all lots in the subdivision were sold. The law regarding private dedication of land, such as the park at issue here, differs from a public dedication of land. Generally, a grantor retains no rights to land dedicated to the public. *City of Kentwood v Sommerdyke Estate*, 458 Mich 642, 664; 581 NW2d 670 (1998). However, dedications of land for private uses that occurred before the enactment of the Land Division Act (1967 PA 228), MCL 560.101 *et seq*., "convey *at least* an irrevocable easement in the dedicated land." *Little v Hirschman*, 469 Mich 553, 564; 677 NW2d 319 (2004) (emphasis added). The Supreme Court has construed the Land Division Act as expressly providing that a private dedication in a plat conveys a fee simple interest to the donees. *Martin v Beldean*, 469 Mich 541, 548; 677 NW2d 312 (2004). Therefore, the law simply does not support defendant's position that after dedicating and selling all the lots, which occurred before the enactment of the Land Division Act, the Garchows' fee interest automatically transferred to the lot owners as tenants in common. Further, retention of the fee is not at odds with the irrevocability of the other lot owners' use rights, as the fee owner cannot use the burdened land in any manner that would interfere with the easement holders' rights. *Dobie v Morrison*, 227 Mich App 536, 541; 575 NW2d 817 (1998).

Whether a pre-1968 private dedication conveys more than an easement to the donees depends on the platter's intent as evidenced by the dedication language and the facts and circumstances surrounding the dedication. *Id.* at 540. The language in the dedication states that the park was "dedicated to the use of the owners of lots 16 to 18 inclusive." Also, the Turner plaintiffs' deeds and plaintiff Wong's predecessor-in-interest's deed refer to "rights of ingress and egress" and "access" to Littlefield Lake by way of the park. Although the record reveals no evidence that the Garchows attempted to assert control over the park after the dedication, the deed and dedication language does not evince an intent to convey a fee interest. Rather, as this Court previously held in *Turner I*, the language used is consistent with that of an easement interest only, which confers less than full ownership. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378-379; 699 NW2d 272 (2005). Thus, the circuit court did not clearly err in finding that the Garchows retained a fee interest in the park upon its dedication and sale of the lots.[1]

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[1] We agree with defendant that the trial court erred in relying on an earlier statement by
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In late 2004, during the pendency of this action, Robert Garchow, the plattors' son, was permitted to reopen his mother's estate for the express purpose of conveying the fee interest held by the estate to plaintiffs. As personal representative of the estate, Robert Garchow then executed a quitclaim deed conveying the property to plaintiffs. Defendant challenges the validity of that deed, but none of defendant's arguments are availing. MCL 560.221 *et seq*., which is part of the Land Division Act, is not implicated here because the 2004 deed did not vacate or amend the plat.[2] It only transferred the retained fee ownership, leaving the other lot owners' rights unaffected. *Dobie, supra* at 541. Further, notwithstanding the probate court's decision to allow the estate to be reopened for the purpose of executing the quitclaim deed, defendant had a full opportunity to litigate the nature of whatever property interest was held by the estate in the circuit court.[3]

Because the circuit court did not err in finding that the Garchows retained a fee interest in the park and that the 2004 deed was a valid transfer of that interest, it follows that the court did not err in concluding that plaintiffs acquired riparian rights to the lake. Defendant's argument to the contrary is based on its position that plaintiffs did not acquire a fee interest in the park. As defendant concedes, the holder of a fee interest has full riparian rights to a lake that abuts the property. *Thies v Howland*, 424 Mich 282, 287-288; 380 NW2d 463 (1985).

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering

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defendant's attorney at the earlier summary disposition hearing as establishing that the fee interest remained with the Garchows after the dedication. The statement was merely a legal conclusion; it was not an admission of fact. As such, it was not binding. *Sarin v Samaritan Health Ctr*, 176 Mich App 790, 796; 440 NW2d 80 (1989), abrogated on other grounds *Feyz v Mercy Mem Hosp*, 475 Mich 663; 719 NW2d 1 (2006); *Michigan Health Care, Inc v Flagg Industries, Inc*, 67 Mich App 125, 130; 240 NW2d 295 (1976). However, because the trial court's decision is independently supported by the language in the dedication, the error was harmless. MCR 2.613(A).

[2] MCL 560.221 provides that "[t]he circuit court may, as provided in sections 222 to 229, vacate, correct, or revise all or a part of a recorded plat."

[3] We also reject defendant's argument that the circuit court erroneously based its decision on Robert Garchow's affidavit, which defendant maintains was not in evidence. Defendant stipulated to the affidavit's admission at trial, and in any event, the circuit court simply relied on the affidavit as context for how the 2004 deed came to be executed. The court did not make any findings of fact or base its decision on the representations in the affidavit.